



12/16/97

LEGAL AID SOCIETY OF DAYTON, INC.

333 WEST FIRST STREET • SUITE 500 • DAYTON, OHIO 45402-3031 • PHONE (937) 228-8088
TDD (937) 449-8125 • FAX (937) 449-8131

GARY J. WESTON
Executive Director

December 15, 1997

Ms. Cynthia L. Johnson, Director
Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
401 14th St. S.W., Room 420
Washington, D.C. 20227

re: Proposed Rules on Electronic Fund Transfers, 62 Federal
Register p. 48714

Dear Ms. Johnson:

Edgemont Neighborhood Coalition, Inc. is a nonprofit community organization located in Dayton, Montgomery County, Ohio. The group consists of residents of the Edgemont neighborhood, a low-income African American neighborhood in Dayton, who have associated in order to foster pride in their neighborhood and address the issues of crime, youth and adult joblessness, inadequacy of educational opportunities, affordability of utilities, and business and community development. In addition to being a community organization, Edgemont Neighborhood Coalition, Inc. functions as a small business, operating an office, storefront, community garden and community computer center.

Our neighborhood was part of a pilot project to use a "smart card" (off-line technology) to deliver Food Stamps electronically in portions of Montgomery County. The "smart card" pilot is now being expanded to the entire State. This pilot project was successful in large part because much care was taken to make the system friendly to the user, and not just to those running the system. We believe that it was important that the pilot program:

1. Provided training to new users at a central location;
2. Allowed people to select their own individual PIN numbers;
3. Did not charge a fee for using the card;

On the negative side, the Department of Agriculture rejected Regulation E type consumer protection for cost reasons. We hope the government can profit from our experience.

In commenting on the proposed regulations that concerning Electronic Funds Transfers for government benefits, our goals are:

1. To minimize the expenses of recipients of government payments, many of whom are of low income;



EFT
#002

2. To include the poor in the "mainstream" financial system and prevent them from being relegated to the high cost "poverty" financial market that exploits the poor, consisting of check cashers, finance companies and the like;
3. To extend the consumer protections against theft loss that are commonly provided to the affluent who use credit cards. Many are now mandated by the Federal Reserve's Regulation E;
4. To minimize abusive or discriminatory treatment of the poor by the Federal EFT system itself;
5. To accommodate the special needs of communities such as the disabled;
6. To promote economic development in poverty communities.

We therefor submit the following comments to the Proposed Regulation.

1. We believe there should be no fee charged to the customer for having their payments transferred in this way. Such a fee would be in effect a mandatory reduction in what people have to live on. EFT is being implemented because of the large amount of costs it will save the government. Government should share this benefit with recipients by funding the expense of running the system.

We believe that banks and others can provide this service without charging a fee to the customer. We believe that banks will profit from having these funds in their possession. We are not convinced by the Statistical Evaluation of Float Earnings from the Direct Payment Card Pilot in Dallas and Houston (June 26, 1997). This evaluation found that banks make a profit of up to \$.20 per account per month. However this profit is understated since it is calculated using the rate of interest for the Treasury Bill rather than the actual rate of interest that the bank earns for the money. The evaluation says that while this does understate the earnings, it is impossible to speculate accurately as how much the bank would actually earn on this money (Pages 2 and 3). We find it unlikely that an accurate estimate of bank profitability can not be made in today's marketplace.

If the government insists on charging a fee, it should be minimal and predictable. People should not be penalized for making several withdrawals and a small number should be free.

We also believe that low income customers are often penalized by having to pay service charges on small accounts. As part of this effort the government should minimize or eliminate these kinds of charges by any institution that receives direct deposit funds.

2. We want the government to prevent the poor from being exploited by the poverty financial industry. Many people

have to get their checks cashed at check cashing services or finance companies that charge high fees and high rates of interest. These companies remove these moneys from the community. The poor must use such services because they are excluded from banks and other financial institutions that serve the mainstream. In our neighborhood there are no banks and few ATM machines.

The easiest way to prevent this abuse is to keep these institutions out of the system. If check cashers and finance companies are allowed in, the government should regulate their fees for all activities. Otherwise, the direct deposit will be the "bait" to enable the check cashers and others to charge high fees for other services and loans.

3. To avoid leaving the poor at the mercy of the poverty financial industry, the government should use the Community Reinvestment Act and other strategies to get banks to put branches and ATMs within access of the poor.
4. The government should award its contracts to provide "ETA" accounts for the unbanked to institutions that have a good Community Reinvestment record and otherwise demonstrate socially responsible behavior. The government could award these contracts to community controlled development corporations, enabling them to provide services to their communities and keep the earnings within the communities.
5. The system should be friendly to the user by providing:
 - a. People should be able to pick their own PIN numbers.
 - b. People should have an accessible training site to learn to use the system.
 - c. There should be protection against the system "going down" and leaving people without access to their money.
 - d. There should be a free, functional customer service phone number available at all times.
6. There should be consumer protections limiting loss in case of theft, similar to the Regulation E protections found with other cards. The evaluation of the Dallas and Houston pilots found that there were not significant losses from this. Credit card companies have provided such protections to encourage people to choose to use the cards. The same protections should be given to those who do not have a choice.
7. Hardship waivers should be given liberally to the disabled and others with good reasons not to want deposit to a bank or ETA account.
8. Lost card fees and other charges should be minimal, and then imposed only after repeated use.
9. The government should adopt standards to ensure that ATM

machines are put in safe locations. It will invite crime if ATM machines are placed in isolated, dark or hidden locations.

10. There needs to be continued protection against garnishment of accounts by creditors, including the government itself. Many payments, such as Social Security and SSI, can not be attached while in the hands of the government. While statutes are silent on this point, courts have often found that the policy of the underlying government program should preserve this exemption when the funds are placed in an account. However courts do not always do so. Compare Daugherty v. Central Trust Co., 28 Ohio St.3d 441, 504 N.E. 2d 1100 (1986) (social security and welfare benefits retain their exemption), with Ohio Bell Telephone Co. v. Antonelli, 29 Ohio St. 3d 9, 504 N.E. 2d 717 (1987) (workers' compensation funds do not retain their exemption).

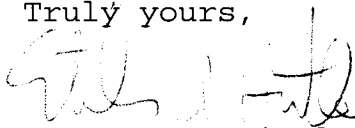
As a practical matter, even when funds are exempt, a bank attachment has the effect of freezing the account until the account holder proves his right to exemption at a hearing. This process can take weeks. In the meantime checks written on an account can bounce, resulting in insufficient funds charges, angry creditors and possible consequences like evictions, utility shutoffs and the like.

This is a serious matter for people with fixed incomes. The government should require that exempt funds not be frozen in response to creditor actions, and that "ETA" accounts made up of exempt funds not be subject to garnishment at all.

11. The government should respect privacy concerns of people receiving transfer funds. Account holders and the government itself should not furnish personal or demographic information to marketers and others.

Thank you for your consideration.

Truly yours,



Stanley A. Hirtle
Attorney at Law

cc: Edgemont Neighborhood Coalition